

Child Welfare: An Analysis of Title IV-E Foster Care Eligibility Reviews

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Summary

Title IV-E of the Social Security Act authorizes states to seek federal reimbursement for certain costs of providing foster care for children who can no longer safely remain in their homes. The statute permits states to make a claim for federal reimbursement of costs that are linked to providing foster care to each federally eligible child. In FY2003, the most recent year for which data are available, states sought federal reimbursement under this authority for approximately \$4.5 billion in foster care costs. The U.S. Department of Health and Human Services (HHS), periodically conducts Title IV-E Foster Care Eligibility Reviews to ensure that states are properly determining the eligibility of children for federal foster care support and are thus making correct claims for reimbursement.

Federal eligibility for foster care is defined in Section 472 of the Social Security Act and is also described in regulations. A child is eligible for federal foster care if (1) a judge has made certain determinations regarding the necessity of his/her removal from the home, regarding the timely efforts of the state child welfare agency to prevent the child's removal, and regarding timely efforts to find a new permanent home for the child; (2) if (except for the removal from his or her home) the child would have met the state's program requirements for the Aid to Families with Dependent Children (AFDC) program (as that program existed on July 16, 1996); (3) the child is placed in a licensed foster family home that is determined to be safe or in an otherwise eligible licensed care facility; and (4) the child is the care and placement responsibility of the state.

Title IV-E eligibility reviews are designed primarily to improve program management in the federal foster care program. A January 25, 2000 rule established the current form of the review and includes certain checks that flow from the 1997 Adoption and Safe Families Act (P.L. 105-89), which are intended to ensure both the safety of children in foster care and the timely actions of the state child welfare agency to establish permanence for children. Since all aspects of the new rule became effective, HHS has conducted reviews in 43 states; of these, 16 were found not to be substantially compliant with Title IV-E foster care eligibility rules. Requirements associated with judicial determinations dominated as reasons for cases being found ineligible, making up 61% of errors. Time limits for obtaining judicial determinations concerning permanency planning created a significant challenge for states. Safety and licensing disqualifications constituted 24% of errors. Problems were due mainly to lack of documentation to verify that state safety requirements were met. Provisions related to AFDC eligibility made up 15% of all errors. About half of AFDC errors were related to income rules, while the rest were linked to other program rules such as establishment of "deprivation." Only 1% of errors were a result of the responsibility and care of the child not being vested with the state.

This report provides an overview of the current Title IV-E Foster Care Eligibility Review process and a discussion of state performance on available reviews conducted after the January 25, 2000 rule's effective date. This report will be updated as additional state performance reports become available. Title IV-E of the Social Security Act authorizes states to seek federal reimbursement for certain costs of providing foster care for children who can no longer safely remain in their homes. The statute permits states to make a claim for federal reimbursement of costs that are linked to providing foster care to each federally eligible child. In FY2003, the most recent year for which data are available, states sought federal reimbursement under this authority for approximately \$4.5 billion in foster care costs. The U.S. Department of Health and Human Services (HHS), periodically conducts Title IV-E Foster Care Eligibility Reviews to ensure that states are properly determining the eligibility of children for federal foster care support and are thus making correct claims for reimbursement.

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Introduction

Congressional interest in ensuring that states achieve positive results for children in foster care has sparked a number of reforms in federal policy and regulations over the past decade. Among these were amendments requiring a new review system designed to assess a state's ability to achieve safety, permanency, and well-being for the children it serves. This report will examine one aspect of this new review system, Title IV-E Foster Care Eligibility Reviews. These reviews, which are smaller in scope than the much more frequently discussed Child and Family Services Review (CFSR), are meant to determine whether a state is making proper claims for federal reimbursement under the Title IV-E Foster Care program. In particular, the review is concerned with whether a state has in place the systems to ensure timely permanency and other judicial determinations and adequate safety checks of provider homes. Apart from fiscal accountability, these aspects of the Title IV-E eligibility review are designed to promote strong program management.

Since the early 1980s, the U.S. Department of Health and Human Services (HHS) has conducted reviews to monitor state compliance with child welfare protections included in Titles IV-B and IV-E of the Social Security Act. Title IV-B authorizes funds to states for a broad range of child welfare services, including child protection, family preservation, family support, time-limited family reunification, and adoption promotion and support services. Title IV-E authorizes the foster care, independent living, and adoption assistance programs. Past reviews of these programs were called "427" reviews, in reference to protections originally outlined in Section 427 of the Social Security Act, and Title IV-E financial reviews. Traditionally, reviews focused on case management practices and file documentation. Child welfare advocates, state and federal officials, and ultimately, Members of Congress became critical of "427" and Title IV-E financial reviews for procedural and programmatic deficiencies. Concerns included the lack of formal regulations to establish uniform review standards, and the punitive, rather than collaborative, nature of the review process. Additionally, there was a perception that focusing on paper compliance and legal requirements did not lead to improved services for children and families. As a result, beginning in 1989 Congress issued a series of moratoriums prohibiting HHS from collecting penalties associated with these reviews.

In 1994, amendments to the Social Security Act (P.L. 103-432) directed HHS to issue formal regulations establishing a new review system to monitor programs under Titles IV-B and IV-E of the Social Security Act and to incorporate the concepts of technical assistance and standardized corrective action into review processes. Subsequently, Congress passed the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-189), which was intended to ensure both the safety of children in foster care and the timely actions of the state child welfare agency to establish permanence for children. On January 25, 2000, HHS published a final rule in the *Federal Register* to establish a formal review process consistent with both the 1994 Social Security Act amendments and with implementation of ASFA.¹ Under the final rule, states are reviewed for conformity with specific federal requirements for child protection, foster care, adoption, family preservation and family support, and independent living services. The final rule replaced previous "427" and Title IV-E financial reviews with two separate reviews: the Child and Family Services

¹ *Federal Register*, vol. 65, no. 16. Part II, U.S. Department of Health and Human Services, Administration for Children and Families, 45 CFR Parts 1355, 1356, and 1357; Final Rule, Jan. 25, 2000 (65 FR 4091).

Review and the Title IV-E Foster Care Eligibility Review. This report is an analysis only of state Title IV-E Foster Care Eligibility Reviews.²

Summary of Findings from Early Reviews

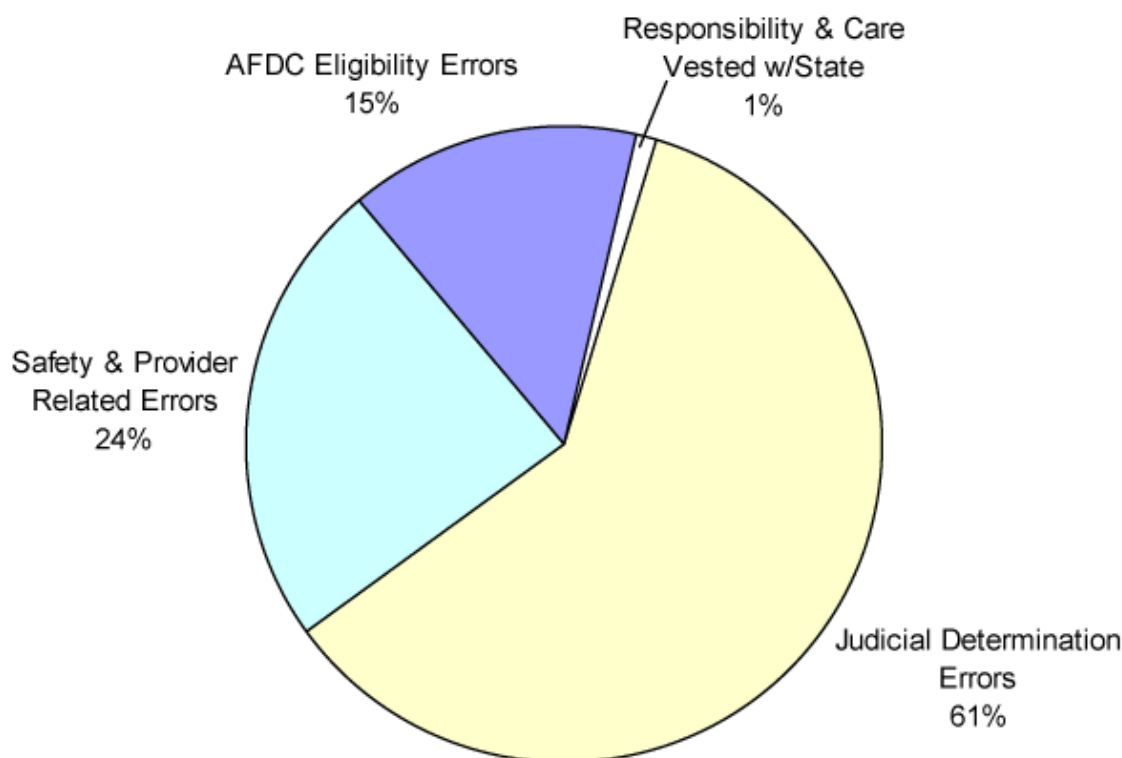
Since implementation of all the requirements under the new review process, HHS has conducted reviews in 43 states and of these, 16 states were found not to be substantially compliant with Title IV-E foster care eligibility requirements.³ (See **Figure 1**.) Requirements associated with judicial determinations dominated as reasons for cases being found ineligible, making up 61% of errors. Time limits for obtaining judicial determinations concerning permanency planning created a significant challenge for states. Safety and licensing disqualifications constituted 24% of errors. Problems were mainly due to lack of documentation to verify that safety requirements were met. Provisions related to AFDC eligibility made up 15% of all errors. About half of AFDC errors were related to income rules, while the rest were linked to other program rules such as establishment of “deprivation.” Only 1% of errors were a result of the responsibility and care of the child not being vested with the state.

The final rule requires states to be attentive to the maintenance, content and organization of files for federally eligible foster care children and their providers. Many of the recommendations for improvement given by reviewers focused on appropriate paperwork and documentation in case files that substantiate timely judicial determinations, current provider licensing, and AFDC eligibility requirements. Reports frequently cited the need for child-specific language in court orders and case narratives to track a child’s placement history and validate re-determinations of eligibility. Additionally, the prompt responsiveness of state child welfare agencies to provisions in the new rule and preparedness for reviews played an important role in determining performance on these early reviews. This report is intended to provide an overview of how states have fared thus far under the new review process. The balance of this report discusses in detail the process and outcomes of these state reviews.

² Child and Family Services Reviews (CFSR) and Title IV-E Foster Care Eligibility Reviews are distinctly separate reviews. The CFSR assesses activities funded by both Title IV-B and IV-E to determine system-wide state compliance with federal law. Title IV-E Foster Care Eligibility Reviews determine only the eligibility of state expenditures for foster care for federal reimbursement under Title IV-E. This report does not include an analysis of CFSR.

³ This report includes only initial primary or primary reviews covering a six-month period beginning after the final rule effective date for provisions related to permanency hearings—Mar. 25, 2001. All 50 states have received reviews, and some have received both initial and primary reviews. Yet, this analysis makes a distinction between reviews covering a period before or after the effective date of all the final rule’s provisions (Mar. 25, 2001). Twenty-two state initial primary reviews were conducted before this date but were not included in the analysis, since they were not yet being assessed for compliance with all the requirements in the final rule.

Figure 1. Distribution of Errors in Title IV-E Foster Care Eligibility Reviews
(Period Under Review after March 25, 2001 - 43 States)



Source: Prepared by Congressional Research Service (CRS) based on analysis of state Title IV-E Foster Care Eligibility Review final reports.

Notes: Percentages may not sum to 100 due to rounding.

Title IV-E Foster Care Review Process

Title IV-E of the Social Security Act authorizes the federal foster care program, through which states may seek reimbursement for a percentage of eligible foster care maintenance payments, and related administrative, training, and data collection costs for federally eligible children.⁴ To access Title IV-E funds, a state must verify a child's eligibility based on several requirements established in the law. These requirements are related to the content of judicial determinations made on behalf of children, provider safety regulations, and certain characteristics of the child, including income of the family from which the child is removed.

Title IV-E reviews are conducted to validate a state's claim for federal reimbursement of payments made on behalf of eligible children. Responsibility for carrying out reviews lies with the Children's Bureau, a division of the Administration for Children and Families (ACF) within HHS.⁵ Reviews assess the accuracy of the state's claim for reimbursement by examining the case

⁴ Title IV-E of the Social Security Act also establishes the Adoption Assistance program, which is an open-ended entitlement program. Title IV-E eligibility reviews look at claims for foster care payments only.

⁵ Title IV-E Foster Care Eligibility Reviews are only one form of fiscal accountability review of federal foster care payments, and do not supersede ongoing monitoring including audits and other checks by the HHS Office of the Inspector General and the Government Accountability Office, or quarterly reviews by the ACF Regional offices that

records of the child, and provider and payment documentation. Reviews are a collaborative effort, conducted by teams comprised of both federal and state staff. The process is designed to occur in stages, with a different timetable, sample size, compliance standard, and penalty structure for subsequent reviews (depending on whether a state is determined to be in compliance).⁶ Table 1 describes the three stages of Title IV-E eligibility reviews.

Table 1. Stages of Title IV-E Foster Care Eligibility Reviews

Initial Primary Review—The first Title IV-E eligibility review conducted in a state following passage of the final rule on January 25, 2000.^a It is intended to give states an opportunity to implement the requirements included in the regulations. Based on a sample of 80 cases, not more than eight cases can be in error for the state to be in substantial compliance. Federal funds are disallowed for any ineligible cases found in the sample.

Primary Review—If a state is found to be in compliance on an initial primary review, primary reviews occur at three-year intervals thereafter, as long as a state continues to be compliant. Primary reviews have a higher threshold—based on a sample of 80 cases, not more than four cases can be in error to be compliant. Federal funds are disallowed for any ineligible cases found in the sample.

Secondary Review—If a state fails an initial primary or primary review, it must develop a Program Improvement Plan (PIP) and a secondary review is conducted upon completion of the plan. A larger sample of 150 cases is taken. For the state to be in compliance, not more than 10% (15) of cases can be in error and the dollar amount of ineligible claims cannot exceed 10% of total claims in the sample. If a state is not compliant, a tougher penalty structure is used to calculate the total disallowance amount. HHS determines the percent of ineligible claims from the sample and applies this percentage to all Title IV-E foster care claims made during the six month period under review.

Source: Table prepared by the Congressional Research Service (CRS), based on information in the ACF, *Title IV-E Foster Care Eligibility Review Guide*.

- a. As defined in the ACF, *Title IV-E Foster Care Eligibility Review Guide*, p. 2. However, some initial primary reviews did cover a partial period under review that occurred before Jan. 25, 2000. (AL, AZ, ID, IL, KS, MT, NH, NJ, SC, TX, WV received initial primary reviews that covered a six-month period from Oct. 1, 1999 through Mar. 31, 2000).

To conduct a review, a sample of cases is drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS). AFCARS includes case level information on all children in foster care for whom state child welfare agencies have responsibility for placement.⁷ The sample drawn for each review consists of cases of individual children who received at least one Title IV-E foster care maintenance payment during the six month reporting period under review. For initial primary and primary reviews, a sample of 80 cases is selected. During secondary reviews, a larger sample of 150 cases is drawn.

Reviewers use an on-site review instrument that includes questions related to the child and provider case records in order to determine whether the eligibility decision of the state agency was supported by appropriate documentation. The instrument includes an eligibility review checklist that covers each of the statutory requirements for Title IV-E eligibility. After each review, a final report is prepared to document the determination of compliance or non-compliance. Final reports include information regarding the dates and location of review, a summary of review findings, including a case record summary of each ineligible case, areas in

may result in disallowance or deferrals of Title IV-E claims.

⁶ For more information see Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Title IV-E Foster Care Eligibility Review Guide*, Nov. 2001. (Hereafter cited as ACF, *Title IV-E Foster Care Eligibility Review Guide*.)

⁷ U.S. Department of Health and Human Services, Children's Bureau, *Data & Info. Systems—About AFCARS*, at <http://www.hhs.acf.gov/programs/cb/afcars>.

need of improvement, strengths and model practices, and notification of any disallowance of federal funds.⁸

Title IV-E Eligibility Requirements

States are reviewed based on the requirements of Title IV-E of the Social Security Act (SSA) and as defined by regulation.⁹ Both the eligibility of children and the eligibility of the foster care provider/placement setting is reviewed. In brief, the case record of the child must contain documentation that demonstrates the following:

- Conditions in the home from which the child was removed were contrary to the child's welfare and that reasonable efforts were made to prevent removal (or a judicial determination of removal through voluntary placement);
- Documentation that the state has made reasonable efforts to finalize a permanency plan;
- The state agency has responsibility for placement and care of the child;
- But for his/her removal from the home, the child would be eligible for AFDC under the state plan as it was in effect July 16, 1996;
- Placement in a licensed or approved foster family home or facility; and
- Verification of provider safety requirements.

For simplification, these eligibility requirements have been separated into four broad categories depending on whether errors were associated with judicial, provider, AFDC, or state-related requirements. (See **Table 2.**)

Table 2. Federal Eligibility Criteria for Title IV-E Foster Care

Type	Title IV-E eligibility criteria	Social Security Act	45 CFR
Judicial	Judicial determination that conditions in the home are Contrary to the Welfare of the child.	472(a)(1)	1356.21(c)
	Judicial determination that the state made Reasonable Efforts to Prevent Removal of the child from the home.	472(a)(1); 471(a)(15)(B)(i)	1356.21(b)(1)
	Judicial determination that the state has made Reasonable Efforts to Finalize a Permanency Plan for the child.	472(a)(1); 471(a)(15)(B)(ii)	1356.21(b)(2)
	If removal is result of Voluntary Placement Agreement , judicial determination that continued placement is in child's best interest.	472(d),(e) and (f)	1356.22
Provider	Child is placed in a Licensed foster family home or facility.	472(a)(3), (b),(c)	1356.71(d)(1)(iv); 1355.20
	State has conducted a Criminal Records Background Check or other safety requirements on provider.	471(a)(20); 475(1)	1356.30

⁸ Final Reports from Title IV-E Foster Care Eligibility Reviews are posted on the Children's Bureau website for public access, at <http://www.acf.hhs.gov/programs/cb/>.

⁹ Section 472 (a) and (b) of the Social Security Act; 45 CFR §§ 1356.21, 1356.71.

Type	Title IV-E eligibility criteria	Social Security Act	45 CFR
AFDC	The child would have been eligible for AFDC based on income, age, deprivation, and specified relative requirements.	472(a)(1), and (4)	1356.71(d)(1)(v)
State	Responsibility for placement and care of child is vested with the State agency.	472(a)(2)	1356.71(d)(1)(iii)

Source: Table prepared by the Congressional Research Service (CRS), based on information in the ACF, *Title IV-E Foster Care Eligibility Review Guide*, Appendix VII.

Judicial

In order to comply with Title IV-E requirements, a child's case file must include documentation showing that his/her removal was done as a result of judicial determinations that continuation in the home would be contrary to the child's welfare, that the state has made reasonable efforts to preserve the family unit, and the state has made reasonable efforts to make and finalize a permanency plan for the child in a timely manner. Permanency plan goals may include reunification, adoption, legal guardianship, or placement with a relative. In addition, for children who are removed from the home under a voluntary placement agreement, a judicial determination indicating that continued voluntary placement is in the child's best interests is required.

As promoted by ASFA and included in the final rule, timeliness of judicial determinations is a primary focus of Title IV-E Foster Care Reviews. For each type of court order the following deadlines must be met in order for a case to be considered in compliance:

- *Contrary to the welfare* judicial determinations must be made in the first court ruling that sanctions the removal of a child from the home.
- The judicial determination regarding *reasonable efforts to prevent removal* of the child from the home must be made within 60 days from the removal date.¹⁰
- Determinations regarding *reasonable efforts to finalize the permanency plan* must be made within 12 months of a child's removal and at least once every 12 months thereafter.¹¹
- *Children in voluntary placement* are only eligible for foster care maintenance payments made in the first 180 days of foster care, unless a judicial determination is issued that finds continued voluntary placement is in the best interests of the child.

Provider

Under the January 25, 2000 rule, states are no longer allowed to provisionally license a provider while completing a criminal records background check. Some states chose to do this, primarily for relative placements. However, HHS determined this practice to be inconsistent with the

¹⁰ The date of removal is defined as "the earlier of: the date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home." This definition determines the date used in calculating all time period requirements for periodic reviews. (45 CFR Part 1355.20).

¹¹ The Jan. 25, 2000 final rule issued by HHS gave states a transition period to fulfill the judicial determination requirement related to permanency planning. The effective date of the permanency plan provision was delayed a year to Mar. 25, 2001.

provisions included in ASFA to ensure a child's safety is a pre-eminent concern.¹² Foster family homes provisionally licensed were required to be fully licensed by September 28, 2000.¹³

To be eligible for Title IV-E funding, a foster care provider must meet standards for full licensure or approval that are established by the state. The responsibility for establishing minimum licensing standards is vested with the state.¹⁴ The review determines whether the foster family home or facility has a valid license during the period under review. Reviews also consider whether a provider is a Title IV-E eligible facility. An eligible facility may be a foster family home, a group home, a private child care institution, or a public child care institution that accommodates 25 or fewer children.¹⁵ States are also assessed based on whether federal safety requirements have been met. Federal safety requirements pertain to criminal records background checks for providers. While federal law permits states to opt out of criminal records background checks, federal regulations provide that the state must nonetheless keep documentation that safety considerations have been made.¹⁶

AFDC

Federal reimbursement for eligible costs incurred on behalf of a foster care child may only be claimed if that child would have been eligible for Aid to Families with Dependent Children (AFDC), but for their removal from the home. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaced AFDC with Temporary Assistance for Needy Families (TANF), but retained the link between Title IV-E eligibility and the AFDC program. As a result, states must continue to determine a child's Title IV-E eligibility based on AFDC policies and procedures as defined in the state's plan on July 16, 1996. AFDC eligibility requires documentation that (1) the child was financially needy according to the state's standards as of July 16, 1996; (2) the child was deprived of parental support or care at the time of removal due to death, continued absence from the home, physical or mental incapacity of a parent or unemployment of a principal wage-earning parent; (3) the child is under the age of 18, unless the state exercised the school attendance option for students who are 18; and (4) the child was living with a parent or specified relative prior to removal (i.e., parent, grandparent, sibling, step-parent, step-sibling, uncle, aunt, first cousin, nephew or niece).

State

The court order removing the child from the home (or voluntary placement agreement) must indicate that the state agency has responsibility for placement and care of the child, or if another public agency (or Indian tribe) is administering Title IV-E, a written agreement pertaining to responsibility for placement and care is required.

¹² The final rule does allow states to make certain exceptions to their licensing rules for relatives, but only if they are not safety-related (e.g., required number of bathrooms), and only if the exception is made on a case-by-case basis.

¹³ ACF, *Title IV-E Foster Care Eligibility Review Guide*, p. 20.

¹⁴ Section 471(a)(10) of the Social Security Act.

¹⁵ Certain ineligible placement settings are specified in law. These include, "detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent." (Section 472(c)(2) of the Social Security Act).

¹⁶ Section 471(a)(20) of the Social Security Act, and 45 CFR § 1356.30(e). For more information on this issue, see CRS Report RL32430, *Child Care and Child Welfare: Background Checks*, by Kendall Swenson.

Standards of Compliance and Disallowance

As displayed in **Table 1**, during initial primary reviews and primary reviews a sample of 80 cases is assessed. A state is compliant in an initial primary review if the number of cases found ineligible does not exceed eight. States found compliant receive a subsequent primary review after three years. The state must reach a higher standard of compliance during primary reviews; the case error rate threshold is reduced to no more than four ineligible cases out of a sample of 80. During the initial primary and primary reviews, federal funds are disallowed for all ineligible cases found in the sample for the period of time the cases were in error. Administrative costs claimed are also subject to disallowance.¹⁷

If reviewers find that ineligible payments were made outside the six-month period under review, those cases are classified as “non-error cases with ineligible payments.” Federal funds are disallowed, but the cases do not count against the state’s threshold for compliance. Reviewers in Florida’s Title IV-E initial primary review noted, “An additional 14 cases were identified that contained ineligible payments made outside of the period under review. Although these cases will not be considered as ‘error cases’ for determining substantial compliance, the ineligible maintenance payments and the associated administrative costs are nevertheless subject to disallowance.”¹⁸

States that are not compliant during their initial primary or primary reviews must develop a program improvement plan (PIP) and will receive a secondary review once the plan is completed. In a secondary review a sample of 150 cases is taken. For the state to be in compliance, not more than 10% (15) of cases can be in error *and* the dollar amount of ineligible claims cannot exceed 10% of total claims in the sample. If a state is not compliant, a tougher penalty structure is used to calculate the total disallowance amount. HHS determines the percent of ineligible claims from the sample and applies this percentage to all Title IV-E foster care claims made during the six-month period under review. Thus, repeated non-compliance elicits more severe disallowance penalties during secondary reviews since it is not restricted to only ineligible cases found in the sample. If a state is faced with a disallowance, the state must repay these funds.

Appeals Process for Review Findings

States may choose to pursue an appeals process to contest ineligible cases and disallowance of federal funds resulting from Title IV-E eligibility reviews.¹⁹ Of states found not compliant in either their initial primary or primary reviews, at least six have filed appeals with the Departmental Appeals Board (DAB). California and Indiana filed appeals that resulted in the Administration for Children and Families (ACF) revising its original decision regarding their compliance by lowering the number of ineligible cases below the threshold.²⁰ Pending appeals also include disputes related to cases being ineligible based on the requirements that states make

¹⁷ An Oct. 2, 2002 Program Instruction issued by HHS (ACYF-CB-PI-02-08) delayed the effective date of a policy that would have disallowed administrative costs for an otherwise eligible child placed in an unlicensed family foster home until formal regulations are issued. On Jan. 31, 2005, HHS published a Notice of Proposed Rulemaking, which seeks to implement this policy. See 70*Federal Register* 4803 (Jan. 31, 2005).

¹⁸ U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, *Florida Title IV-E Foster Care Eligibility Review for the Review Period Apr. 1, 2003 to Sept. 30, 2003*.

¹⁹ 45 CFR § 1356.71(j)(4).

²⁰ In California, an addendum to the final report (Nov. 3, 2003) reversed the error finding for two sample cases based on documentation submitted after the review. In Indiana, the initial primary review was amended to drop two of the cases originally cited as ineligible.

reasonable efforts to finalize a permanency plan within 12 months. South Carolina filed an appeal with the DAB stating that, "... court orders did in fact contain some language in support of reasonable efforts to prevent removal and finalize a permanency plan, albeit not the 'magic words' that ACF was looking for."²¹ South Carolina has taken the position that it should not be held accountable for omissions by the judiciary. Several states have also filed a consolidated appeal contending that an administrative costs disallowance for cases deemed ineligible during a primary review is not supported by federal regulation. These and other pending appeals may prompt some adjustments in the ACF review process depending on final rulings by the board.

Program Improvement Plans

States that are found not compliant during their reviews must develop and implement a Program Improvement Plan (PIP) to address areas identified as weaknesses. Once a review is completed, states are given 90 days to submit a PIP and are given one year to implement any needed corrective action. A secondary review is then conducted to re-evaluate state compliance with Title IV-E regulations. The secondary review process is the same as the initial primary and primary reviews, only the sample size is larger and the penalty structure differs. PIPs are developed with technical assistance from the ACF regional office in order to correct problems in areas of non-compliance. Plans must include specific goals and action steps required to correct identified areas needing improvement, and include a description of how progress on the PIP will be evaluated by the state. PIPs are intended to facilitate compliance through collaboration and technical assistance provided by ACF regional and federal staff.

PIP goals and activities have included certification of new foster homes, improving record keeping, implementing a tracking system for provider license renewals, increased monitoring of court orders, and hiring and training of specialized Title IV-E eligibility staff. Some plans included state legislative changes that are required to facilitate compliance with Title IV-E provisions. For example, in the final report for Louisiana's primary review it was suggested that the state seek statutory changes to clarify what constitutes full licensure under state statute, since provisional licenses are no longer allowed.²²

Analysis of Title IV-E Eligibility Reviews

This discussion is limited to those states that received reviews covering a period beginning after the effective date of all the provisions included in the January 25, 2000 final rule. The effective date of the final rule's requirement that all providers be fully licensed was September 28, 2000, and the effective date that states make reasonable efforts to finalize a permanency plan was March 25, 2001.²³ Forty-three states received Title IV-E eligibility reviews covering a six-month period after March 25, 2001 and have been assessed for compliance with the same basic requirements under the new rule.²⁴ **Table 3** provides an overview of the errors that states received on initial primary or primary reviews across judicial, provider, AFDC and state-

²¹ Docket Number A-04-133, Departmental Appeals Board.

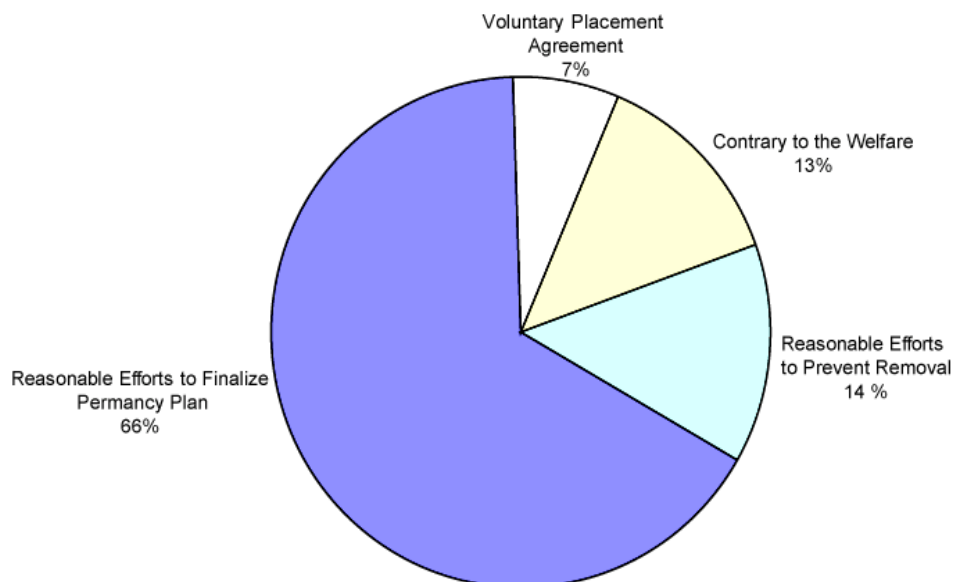
²² U.S. Department of Health and Human Services to State of Louisiana Department of Social Services, letter from Dec. 2, 2004.

²³ Twenty-two states received initial primary reviews with a period under review that occurred prior to Mar. 25, 2001. These state reviews were not included in the analysis because they were not being assessed for the same basic requirements as those states with a period under review after Mar. 25, 2001, namely the permanency planning provision.

²⁴ Puerto Rico and the District of Columbia received Title IV-E Foster Care Eligibility Reviews after Mar. 25, 2001, but

Figure 2. Review Errors Related to Judicial Requirements

(Period Under Review after March 25, 2001 - 43 States)



related requirements. The categories “initial primary” and “primary” reviews are mutually exclusive, meaning no state is represented in both columns. (**Appendix A** provides information on review dates and outcomes individually by state.)

This analysis simply looks at the frequency of errors that occurred across Title IV-E requirements. Of the 43 states included, 28 received initial primary reviews and 15 received primary reviews.²⁵ The most common reason for cases to be in error was related to the judicial determination that states make reasonable efforts to finalize a permanency plan (40% of all errors), followed by errors related to provider licensing (14% of all errors), and criminal records background checks (10% of all errors). Permanency plan errors dominated in both initial primary and primary reviews. Provider licensing problems also resulted in a substantial number of cases being found ineligible in both reviews, 12% and 16% respectively. Errors related to AFDC eligibility requirements were generally below 5% in both types of reviews, with the exception being AFDC income eligibility requirements in initial primary reviews, which made up 9% of all errors in those reviews.

Table 3. Overview of Errors Across All 43 States

Type	Description	Initial primary (28 states)	Primary (15 states)	Total errors (43 states)
Judicial	Contrary to the welfare	9%	4%	8%
	Reasonable efforts to prevent removal	8%	10%	9%
	Reasonable efforts to finalize permanency plan	33%	55%	40%

were not included in the analysis. The District of Columbia review encountered extensive data reporting problems in AFCARS. Puerto Rico’s review was compromised by difficulties related to Title IV-E payment and claiming information.

²⁵ All of the fifteen states that received primary reviews, received initial primary reviews that were not included in the analysis because the period under review was before Mar. 25, 2001.

Type	Description	Initial primary (28 states)	Primary (15 states)	Total errors (43 states)
Provider	Voluntary placement agreement	5%	2%	4%
	Licensing	12%	16%	14%
	Criminal background check	12%	5%	10%
AFDC	Income	9%	2%	7%
	Specified relative	1%	2%	2%
	Age	1%	2%	2%
	Deprivation	4%	1%	3%
	Unspecified	2%	1%	2%
State	Responsibility for placement and care vested with state	2%	0	1%

Source: Table prepared by CRS based on analysis of state Title IV-E Foster Care Eligibility Review final reports.

Note: Bolded percentages highlight most dominant errors in reviews. Percentages may not sum to 100 due to rounding.

Initial Primary and Primary Reviews

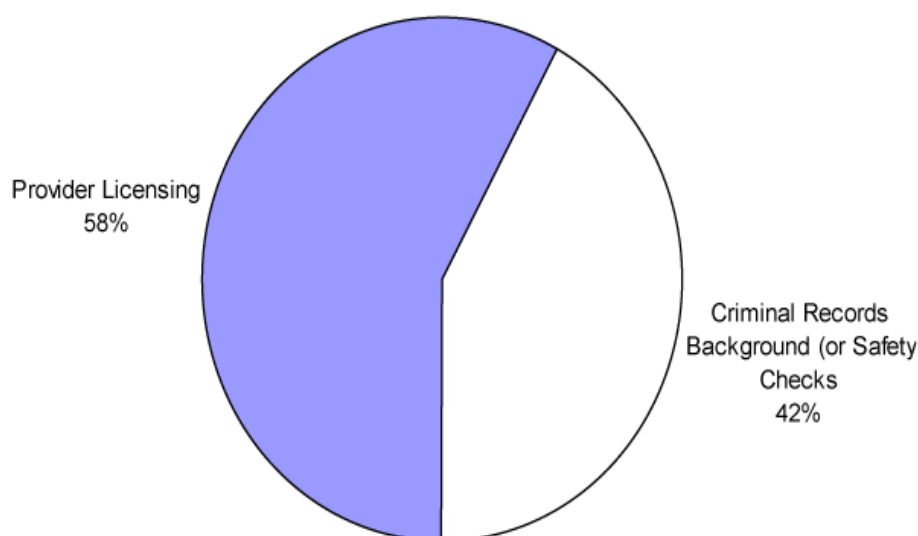
Nine of the 28 states that received initial primary reviews were found not compliant, which means the number of ineligible cases exceeded eight; seven of the 15 states that received primary reviews were found not compliant, which means the number of ineligible cases exceeded the primary review threshold of four. While only 15 states have received primary reviews under the new rule, 47% have been found not compliant. This is a higher percentage of non-compliance than found in initial primary reviews, where 32% of states were found not compliant. The lower error rate threshold (four instead of eight) is the most obvious reason for this trend but the persistence of errors related to permanency plan judicial determinations in both reviews also appears to be a factor. It is in this area that states have had to make the most adjustment in responding to the requirements in ASFA and the final rule, particularly in bringing their court systems up to speed and ensuring that staff are monitoring cases for compliance. The following gives a brief account of errors associated with each category.

Judicial. Across the 43 states reviewed, errors associated with judicial determinations were primarily a result of incorrect (or lack of) language used within a court order, and/or the orders were not made within the required time frame. *Contrary to the welfare* errors resulted from lack of appropriate language, and the finding not being included in the first court order after the child's removal. *Reasonable efforts to prevent removal* errors were largely because the state did not obtain the court order within the required 60-day limit. Nearly every state experienced errors because *permanency plan* determinations were not timely, which means they did not obtain these orders within the required 12-month time frame.

Provider. Errors associated with licensing and criminal records background checks were most often due to lack of appropriate documentation in provider files. Some states continued the use of provisional licenses beyond the effective date (September 28, 2000) of the provision in the final rule prohibiting them, and others had ineligible cases due to invalid or expired licenses of providers. Lack of timely renewal of provider licenses created lapses in eligibility for otherwise federally eligible IV-E foster care children.

Figure 3. Review Errors Related to Provider Requirements

(Period Under Review after March 25, 2001 - 43 States)

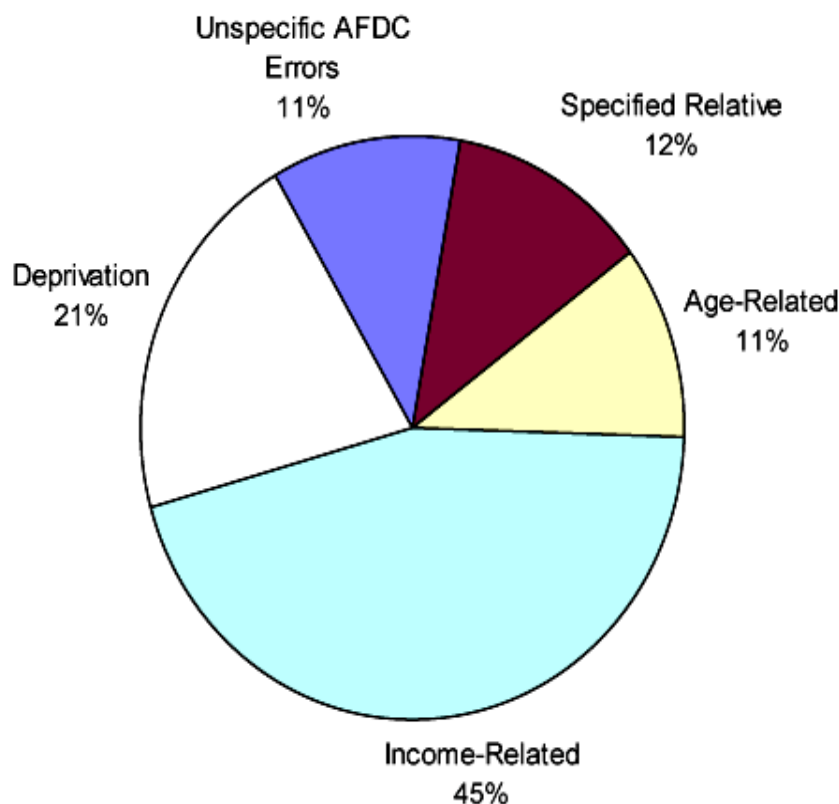


Source: Figure prepared by CRS based on analysis of state Title IV-E Foster Care Eligibility Review final reports.

Notes: Percentages may not sum to 100 due to rounding.

AFDC. Throughout the reviews, AFDC eligibility errors were often the result of a lack of sufficient documentation in a child’s case file to validate the child was financially needy, removed from a specified relative and/or deprived of parental support. This was especially an issue for re-determinations of AFDC eligibility, where many files lacked a case narrative or history to support continued eligibility under these requirements. AFDC “unspecified” includes errors that were identified only as “AFDC-related” in final reports.

Figure 4. Review Errors Related to AFDC Eligibility
(Period Under Review after March 25, 2001 - 43 States)



Source: Figure prepared by CRS based on analysis of state Title IV-E Foster Care Eligibility Review final reports.

Notes: Percentages may not sum to 100 due to rounding.

State. Less than 1% of errors during reviews were a result of this requirement. Errors were mostly due to the court order or voluntary placement agreement not explicitly indicating that the state agency has responsibility for the child's placement and care, or the court order that extended the child's placement in foster care was not timely or could not be located at all.

Secondary Reviews

Of the 16 states that were not in compliance on their initial primary and primary reviews after the March 25, 2001 effective date for the permanency planning provision, none have had secondary reviews that are available. Yet, four states that received and failed an initial primary review *before* the March 25, 2001 effective date have had their follow-up secondary reviews with final reports available.²⁶ These states, Iowa, Kansas, Maine, and New Jersey, were not assessed for compliance with the permanency plan provision on their initial primary review, but were assessed for compliance with this requirement during their secondary reviews.

As discussed earlier, secondary reviews are required of states that are found not compliant in their original reviews. Secondary reviews are conducted after implementation of a Program Improvement Plan (PIP), which is intended to outline goals and activities to address areas of

²⁶ These four states were part of the twenty-two state reviews not included in this analysis because the period covered by the review occurred prior to Mar. 25, 2001.

weaknesses in determining Title IV-E eligibility. Iowa, Kansas and Maine were found compliant on their secondary reviews, meaning out of the 150 case sample, the number of ineligible cases did not exceed 15. New Jersey was found not compliant during the secondary review. Since only four states have undergone secondary reviews, it is difficult to assess the effectiveness of PIPs and technical assistance at improving state compliance with Title IV-E requirements. Yet, these examples do provide some insight into specific problem areas that states are addressing to come into compliance with requirements.

Kansas was originally found not compliant in their initial primary review for 21 ineligible cases.²⁷ Thirteen errors were attributed to judicial determinations (contrary to the welfare and reasonable efforts to prevent removal), 10 errors were a result of incorrect AFDC eligibility determinations, and reviewers found eight provider licensing errors. The state implemented a PIP that focused on activities to better train staff on Title IV-E requirements, especially related to AFDC provisions. In the state's secondary review, only two ineligible cases were found due to two errors related to AFDC eligibility determination and one error in provider licensing. The final report noted that the state has been able to successfully implement many of the practices described in the PIP.

In Iowa, 22 cases were found ineligible during the initial primary review. The majority of errors, 15, resulted from incorrect AFDC eligibility determinations. Reviewers found that the eligibility form was difficult to follow and did not clearly identify a child's eligibility based on income resources, removal from the home of a specified relative, and deprivation of parental support. The state also received 12 errors due to judicial-related problems (on contrary to the welfare and reasonable efforts to prevent removal determinations), and three errors for provider licensing issues. In Iowa's secondary review, seven cases were determined to be ineligible and the state was found to be compliant. Problems with judicial determination provisions resulted in five errors and two errors were cited for licensing documentation not being found in the file. The review found no errors due to AFDC eligibility determinations.

In Maine, the initial primary review found 24 ineligible cases, with 22 errors associated with provider licensing requirements, three judicial determination errors and six errors related to AFDC. The majority of these errors were due to the lack of timely fire inspections in foster care facilities. The state addressed this issue by working to improve communication with the Fire Marshall's office, implementing a tool to track licensing tasks, and by increasing the term of a foster home license from one to two years. In the state's follow-up secondary review all cases reviewed had fire inspections up to date, although the reviewers found three other licensing errors, four errors because financial need or deprivation for AFDC eligibility was not established, and six errors related to judicial determinations.

New Jersey was found not compliant in its initial primary and secondary reviews. In the initial primary review, the predominant reasons for error were invalid or expired licenses of providers (33 errors) and problems with timely judicial determinations (17 errors). The initial primary review report noted that the state relied on the issuance of temporary licenses which resulted in lapses in eligibility, and that the content and language of court orders was not sufficient. The state developed a PIP that included certification of 3,000 new foster homes, hiring Title IV-E specialists, and improving provider certification record keeping and tracking systems. In the secondary review, the state had problems meeting judicial requirements (48 errors), specifically with the provision that agencies make and finalize a permanency plan within 12 months of the child's removal from the home, which made up 22 of the 48 judicial-related errors. The state also had 30 provider licensing errors and 19 AFDC eligibility determination errors.

²⁷ The number of ineligible cases does not always match the total number of errors, since a case could be deemed ineligible based on multiple errors.

Strengths and Weaknesses Found Among States

Final reports for each of the states reviewed included a section that identified strengths and weaknesses of state agency practice related to Title IV-E eligibility determinations. Though these recommendations varied widely across states, depending on the severity of compliance problems, there were several points repeated by reviewers that highlight some trends. Many of the recommendations for improvement centered around appropriate paperwork and documentation in case files that substantiate timely judicial determinations, current provider licensing, and AFDC eligibility requirements.

Strengths

Organization of case files, preparation for reviews and attention to detail when managing cases was a strength for many states. Examples of these practices are efficient tracking of children and use of case narratives that contain documentation of specific services provided to families to prevent removal of the child from the home. Also, the use of a standard filing format, separation of foster care eligibility files from the children and family files, and collaborative teamwork preparing for reviews were noted as best practices. In the area of provider licensing and safety, strengths were found in clear documentation of criminal records background checks and certification of foster family homes/facilities, developing a licensing checklist for files, and use of a software system to manage licensing renewals. Other examples of strengths included a well-documented Title IV-E eligibility process, and clear eligibility determination forms that show income eligibility and whether deprivation of parental support exists. Reviewers noted that the design of Title IV-E eligibility forms was helpful to the review and that well-designed forms were important for facilitating compliance.

Staff and management was also an area of strength for some states. One of the most often noted strengths was that the agency had a centralized staff whose exclusive function was the determination of Title IV-E eligibility. Reviewers found that a direct result of this specialization was more accurate and timely decisions regarding eligibility and re-determination of eligibility. Collaboration with the courts was an important component in the Title IV-E eligibility process and reviewers highlighted strengths in this area. Training initiatives with judicial personnel, completion of a judge's handbook, development of court incentives to hear cases timely, and hiring a Court Improvement Project Coordinator were strengths noted in reviews. Reviewers emphasized best practices in states where court orders were child specific and well written, the court system was responsive to foster care cases, and court orders were descriptive of case specific circumstances. Additionally, some states established practices that assessed for judicial determinations more frequently than required by statute. For example, Arizona completes voluntary placement determinations in 90 days as opposed to 180 days and California assesses permanency plan efforts every six months instead of 12.

Weaknesses

Some of the strengths and weaknesses identified mirror each other, but they also reveal points of emphasis by reviewers. In the area of judicial determinations, lack of child specific court orders was often cited as an area in need of improvement, especially when states used a form or check off type of order as evidence of judicial determinations. Reviewers recommended discontinuing the use of boilerplate court orders that do not reflect court decisions made for each child or adequate language related to judicial requirements. Other examples are inappropriate use of long-term care as a permanency goal, and surpassing the 180-day limit for voluntary placements. Across states, obtaining timely determinations for permanency plans was a frequent problem.

Reviewers recommended implementing a “tickler” system to notify staff of the due date for the required court orders.

In states with licensing errors, reviewers recommended the licensing bureau develop training for staff on ACF Title IV-E review processes. It was problematic during reviews if the licensing staff were not available or did not participate in reviews to make clarifications or answer questions. Weaknesses also included the use of provisional licenses, and lack of a tracking process and organized record keeping to establish the licensing history of providers. AFDC eligibility was an area of weakness for a few states, especially for re-determination of Title IV-E case eligibility. Reviewers often found that AFDC linkages did not clearly identify the month that the eligibility determination was made, lacked documentation of financial resources, and had no process in place for communicating to staff changes in family circumstances. Further training of staff on AFDC requirements and centralization of eligibility determinations within the agency were recommendations given by reviewers. In some states, there was substantial variation among particular counties in the completeness of case histories. Reviewers emphasized better communication to make standards for handling federally eligible foster care cases uniform throughout the state.

Appendix A.

Table A-1. Review Dates and Outcomes Individually by State^a

State	Date of review	Compliance status	Period under review	Sample size	Ineligible cases	Total errors	State errors	Judicial errors	Provider errors	AFDC errors
Alabama (Primary)	07/14/03	Not Compliant	04/01/02-09/30/02	80	23	26	0	21	4	1
Alaska (Initial Primary)	09/15/03	Substantial Compliance	10/01/02 - 03/31/03	80	1	1	0	0	1	0
Arkansas (Initial Primary)	06/23/03	Not Compliant	04/01/02 - 09/30/02	80	10	10	0	0	9	1
California (Initial Primary)	06/02/03	Substantial Compliance (Amended)	04/01/02 - 09/30/02	80	8	10	0	4	5	1
Colorado (Initial Primary)	04/21/03	Substantial Compliance	04/01/02 - 09/30/02	80	3	5	0	2	1	2
Connecticut (Initial Primary)	03/24/03	Substantial Compliance	04/01/02 - 09/30/02	80	7	7	0	6	1	0
Delaware (Initial Primary)	07/21/03	Substantial Compliance	10/01/02 - 03/31/03	80	7	7	0	4	2	1
Florida (Initial Primary)	02/23/04	Substantial Compliance	04/01/03 - 09/30/03	80	4	5	0	1	2	2
Georgia (Initial Primary)	08/04/03	Substantial Compliance	10/01/02 - 03/31/03	80	2	2	0	2	0	0
Idaho (Primary)	06/07/04	Substantial Compliance	04/01/03 - 09/30/03	80	4	4	0	1	2	1
Illinois (Primary)	08/16/04	Substantial Compliance	10/01/03 - 03/31/04	80	4	4	0	3	1	0
Indiana (Initial Primary)	03/17/03	Substantial Compliance (Amended)	04/01/02 - 09/30/02	80	9	13	0	3	4	6
Kentucky (Primary)	11/01/04	Substantial Compliance	10/01/03 - 03/31/04	80	2	2	0	1	0	1
Louisiana (Primary)	07/30/04	Not Compliant	10/01/03 - 03/31/04	80	5	5	0	0	5	0

State	Date of review	Compliance status	Period under review	Sample size	Ineligible cases	Total errors	State errors	Judicial errors	Provider errors	AFDC errors
Maryland (Initial Primary)	07/29/02	Not Compliant	04/01/01 - 09/30/01	80	38	44	0	39	4	1
Massachusetts (Initial Primary)	11/03/03	Not Compliant	10/01/02 - 03/31/03	80	9	9	0	7	1	1
Michigan (Initial Primary)	03/22/04	Not Compliant	04/01/03 - 09/30/03	80	12	14	1	8	3	2
Minnesota (Initial Primary)	04/26/04	Substantial Compliance	04/01/03 - 09/30/03	80	2	3	0	1	0	2
Mississippi (Initial Primary)	02/10/03	Not Compliant	04/01/02 - 09/30/02	80	13	13	0	6	3	4
Montana (Primary)	06/16/03	Not Compliant	04/01/02 - 09/30/02	80	22	33	0	31	1	1
Nebraska (Initial Primary)	09/15/03	Substantial Compliance	10/01/02 - 03/31/03	80	6	6	0	3	3	0
Nevada (Initial Primary)	04/22/02	Substantial Compliance	04/01/01 - 09/30/01	80	3	4	0	2	0	2
New Hampshire (Primary)	12/01/03	Substantial Compliance	10/01/02 - 03/31/03	80	4	4	0	0	3	1
New Mexico (Initial Primary)	07/14/03	Substantial Compliance	04/01/02 - 09/30/02	80	6	7	0	1	3	3
New York (Initial Primary)	04/28/03	Not Compliant	04/01/02 - 09/30/02	80	31	62	4	49	0	9
North Carolina (Initial Primary)	08/26/02	Substantial Compliance	10/01/01 - 03/31/02	80	0	0	0	0	0	0
North Dakota (Initial Primary)	04/14/02	Substantial Compliance	04/01/01 - 09/30/01	80	4	4	0	4	0	0
Ohio (Primary)	09/27/04	Substantial Compliance	10/01/03 - 03/31/04	80	1	1	0	0	1	0
Oklahoma (Initial Primary)	09/22/03	Substantial Compliance	10/01/02 - 03/31/03	80	0	0	0	0	0	0

State	Date of review	Compliance status	Period under review	Sample size	Ineligible cases	Total errors	State errors	Judicial errors	Provider errors	AFDC errors
Oregon (Initial Primary)	08/26/02	Substantial Compliance	10/01/01 - 03/31/02	80	6	7	0	2	5	0
Rhode Island (Primary)	07/26/04	Substantial Compliance	10/01/03 - 03/31/04	80	1	2	0	0	2	0
South Carolina (Primary)	04/19/04	Not Compliant	04/01/03 - 09/30/03	80	21	23	0	22	0	1
South Dakota (Initial Primary)	05/13/03	Substantial Compliance	04/01/02 - 09/30/02	80	5	5	0	4	0	1
Tennessee (Initial Primary)	12/01/03	Not Compliant	10/01/02 - 03/31/03	80	26	37	0	8	29	0
Texas (Primary)	08/18/03	Substantial Compliance	10/01/02 - 03/31/03	80	0	0	0	0	0	0
Utah (Initial Primary)	09/16/02	Substantial Compliance	10/01/01 - 03/31/02	80	3	3	0	0	3	0
Vermont (Initial Primary)	09/16/02	Not Compliant	10/01/01 - 03/31/02	80	26	35	0	12	2	21
Virginia (Primary)	08/23/04	Not Compliant	10/01/03 - 03/31/04	80	14	15	0	5	5	5
Washington (Primary)	09/20/04	Substantial Compliance	10/01/03 - 03/31/04	80	1	1	0	0	1	0
West Virginia (Primary)	09/08/03	Not Compliant	10/01/02 - 03/31/03	80	25	29	0	21	6	2
Wisconsin (Initial Primary)	03/04/02	Not Compliant	04/01/01 - 09/30/01	80	23	25	2	19	3	1
Wyoming (Primary)	06/21/04	Not Compliant	04/01/03 - 09/30/03	80	15	15	0	12	3	0

Source: Prepared by CRS based on analysis of state Title IV-E Foster Care Eligibility Review final reports.

- a. Includes only those 43 state reviews with a six month period under review after Mar. 25, 2001, the date that all aspects of the final rule were effective.

Summary

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This report was written by Cheryl Vincent, a Presidential Management Fellow on detail from the U.S. Department of Health and Human Services, under the supervision of Karen Spar and Emilie Stoltzfus, Domestic Social Policy Division.

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